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IN THE

Supreme Court of the United States

October Term, 1992

COLUMBUS-AMERICA DISCOVERY GROUP, INC.
Petitioner,

v.

ATLANTIC MUTUAL INSURANCE COMPANY, *et al,*
Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals For the Fourth Circuit

BRIEF IN SUPPORT OF GRANTING THE PETITION FOR A WRIT OF CERTORARI

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EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

QUESTION PRESENTED

May admiralty courts continue to infer abandonment of long-lost shipwrecks from the passage of many decades, non-use, and all other relevant facts and circumstances, and accordingly award ownership of a shipwreck to those who discover, recover and conserve it under the law of finds; or must courts award title to purported insurers and their successors who claim ownership of a shipwreck under the law of salvage on grounds that abandonment can never be found absent clear and convincing evidence that the purported owners expressly renounced title?

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INTEREST OF THE SIGNATORY STATES AS AMICI CURIAE

Amici represent their States through their respective Offices of the Attorney Generals for the States of Florida, Ohio, North Carolina, Rhode Island, South Carolina and Virginia. Under the Abandoned Shipwreck Act of 1987, 43 U.S.C. Section 2102 *et seq.*, the States have been granted title to all historic shipwrecks that lie on or under their submerged lands. The Attorneys General are charge with applying and enforcing the Abandoned Shipwreck Act, as well as the implementing legislation passed by their respective States and other legislation applicable to the management and protection of long-lost, historic abandoned

shipwrecks. Because the States are concerned with the serious legal and practical consequences of the decision below on what is or is not abandoned; what activities, or lack thereof, constitute legal abaondoment; and the standard of proof for abandonment of long-lost shipwrecks, they respectfully request that the Court review the decision below.

REASONS FOR GRANTING THE WRIT

In addition to the reasons for granting the Writ as presented by the Petitioner, the Amici Curiae believe the Court's attention should also be directed upon the Court of Appeals' decision as it would affect the Abandoned Shipwreck Act of 1987, codified at 43 U.S.C. Section 2101 through 2106 (hereinafter "ASA"). While the ASA was not before or considered by the Court of Appeals, because the CENTRAL AMERICA sank far beyond the territorial jurisdiction of any State or the United States, the Court of Appeal's decision on what constitutes "abandonment" will have an adverse impact upon the States as the decision will place an undue burden on the States in their attempt to protect, preserve and display historic shipwrecks found abandoned on their respective sovereign submerged lands. The Court of Appeals' decision will judicially nullify useless Congress' attempt to transfer title to the wrecks to the States and Territories.[1] Since the decision of the Court of Appeals will have important implications for the future State and Federal management of historic shipwrecks under the ASA, and implementing state and federal statutes and regulations, the Court should accept this case.

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1 And, to the extent such historic shipwrecks lie on public lands owned or controlled by the Unites States (i.e. National Parks, National Seashores, and National Marine Sanctuaries), the United States too will be adversely affected.

I. THE DECISION OF THE COURT OF APPEALS MATERIALLY AFFECTS THE VAIBILITY OF THE ABANDONED SHIPWRECK ACT OF 1987 AND THE GOVERNMENTAL ABILITY TO PRESERVE HISTORIC SHIPWERECKS

A. Historic Preservation by the States

Initially, governments protected and preserved historic sites and properties, not through the use of historic preservation law, but through the law of eminent domain. Beginning with the seminal case of *United States v. Gettysburg Electric Railway*, 160 U.S. 668 (1896), this Court upheld the power of the government to acquire historic property through condemnation. The question before this Court was whether the United States had the power to condemn land in Gettysburg, Pennsylvania, for the creation, and then preservation, of the Civil War battlefield. *Id.* at 679. Finding that there was no doubt that the use of the land was a public use, *Id.* at 680, the Court stated

> [a]ny act of congress which plainly and directly tends to enhance the respect and love of the citizen for the institutions of his country, and to quicken and strengthen his motives to defend them, and which is germane to, and intimately connected with, and appropriate to, the exercise of some one or all of the powers granted by congress, must be valid.

Id., at 681. This Court, thus, upheld the right of the United States to use the power of eminent domain to secure historic sites and properties.[2]

States, and local governments, also used eminent domain to acquire historic sites and properties. *See State v. Kemp,* 124 Kan. 716, 261 P. 556 (1927) [acquisition of the Shawnee Mission], *affirmed, Roe v. Kansas,* 278 U.S. 191 (1929) [based on *Gettysburg,* no doubt state has power to condemn land for historic site]; *Timmons v. South Carolina Tricentennial Commission,* 254 S.C. 378, 175 S.E.2d 805 (1970); *Flaccomio v. Mayor & City Council of Baltimore,* 194 Md. 275, 71 A.2d 12 (1950) [acquisition of house in Baltimore where the flag was made that flew over Ft. McHenry inspiring the "Star Spangled Banner"]; *Wechsler v. New York State Department of Environmental Conservation,* 153 A.D.2d 300, 550 N.Y.S.2d 749 (1990); *Coke v. Commonwealth, Department of Finance,* 502 S.W.2d 57 (Ct.App. Ky. 1974) [acquisition of Mary Todd Lincoln house in Lexington, Ky.]; *Cordova v. Tucson,* 16 Ariz. App. 447, 494 P.2d 52 (1972).

Beginning earlier this century, the Federal and State[3] governments went from relying upon the power of eminent domain to acquire historic sites and properties to enacting

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2 *See also Bayon Des Familles Development Corp. v. U.S. Army Corps of Engineers,* 541 F. Supp. 1025 (D. La. 1982) [acquisition of park land for the Jean Lafitte Historic Park]; *U.S. v. Certain Parcel of Land in City of Philadelphia,* 99 F. Supp. 714 (E.D. Pa. 1951) [acquisition of colonial buildings to be part of Independence National Historic Park].

3 *See* Appendix A for a listing of state and territorial laws protecting historic sites, properties and artifacts, including historic shipwrecks.

laws directly protecting and conserving historic sites and artifacts.[4] As this Court noted:

> In the past 50 years, all 50 States and over 500 municipalities have enacted laws to encourage or require the preservation of buildings and areas with historic or aesthetic importance.

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4 In 1906 Congress joined the trend by enacting the Antiquities Act, 16 U.S.C. Sec. 431, *et seq.*, which has as its avowed purpose the protection and management of "objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States." 16 U.S.C. Section 431. In 1935, Congress added the Historic Sites, Buildings, and Antiquities Act, 16 U.S.C. Section 461-467. The declaration of national policy of the Act is found in Section 461, which states in full:

> It is hereby declared that it is national policy to preserve for public use historic sites, buildings and objects of national significance for the inspiration and benefit of the people of the United States.

Under the authority of the Historic Sites Act, Congress has acquired historic sites and properties valuable to American history such as Andersonville (Ga.) National Historic Site (Civil War prison), Carl Sandburg Home National Historic Site (North Carolina home of Carl Sandburg), Ford's Theater National Historic Site (Washington, D.C. location of the assassination of Abraham Lincoln), Hopewell Village National Historic Site (site of Hopewell Indian tribe), Lincoln Home National Historic Site (Abraham Lincoln's Springfield, Illinois home) and Salem Maritime National Historic Site.

Since 1935, Congress has enacted additional laws to directly protect historic sites and properties. *See* National Historic Preservation Act, 16 U.S.C. Sec.'s 470-470w-6, the Archeological Resources Protection Act, 16 U.S.C. Sec.'s 470aa-470ll. Congress has also indirectly provided for historic preservation. In the Maritime Protection, Research and Sanctuaries Act of 1972, 16 U.S.C. Sec.'s 1431-1439, Congress noted the need for historic research in the marine environment and authorized federal agencies to protect historically significant sites as "marine sanctuaries." Pursuant to this law, the Secretary of Commerce created the "Monitor Marine Sanctuary" to protect the remains of the U.S.S. Monitor as it lay on the floor of the Atlantic Ocean and to prohibit any salvage or artifact recovery from this historic vessel. 15 C.F.R. Sec. 924.1-8.

Penn Central Transportation Company v. City of New York, 438 U.S. 104, 107 (1978). When addressing the States' right to enact laws protecting historic properties and sites, the courts have consistently upheld the power of the states. *See Penn Central Transportation Company v. City of New York,* 438 U.S. 104 (1978); *City of New Orleans v. Duke,* 427 U.S. 297 (1976); *Maher v. City of New Orleans,* 516 F.2d 1051 (5th Cir. 1975); *Belman v. State,* 322 Md. 207, 586 A.2d 1281, 1283 (1991); *Portsmouth Advocates, Inc. v. City of Portsmouth,* 587 A.2d 600, 602 (1991); *A-S-P Associates v. City of Raleigh,* 298 N.C. 207, 258 S.E.2d 444 (1979); *Figarsky v. Historic District Commission,* 171 Conn. 198, 368 A.2d 163 (1976); *Santa Fe v. Gamble-Skogmo,* 73 N.M. 410, 389 P.2d 13 (1964).

B. State Defense of Historic Shipwrecks

Based upon their respective historic preservation laws, the States began to set up programs directly aimed at the preservation of historic shipwrecks found on their submerged lands. This included establishing historic preservation offices in State governments whose sole task was the management of the cultural resources claimed by the State legislatures to be the property of the States. Then in the 1970's began a series of challenges, brought mostly in the federal courts, to the States' right to the title, control and management of these historic shipwrecks. *See, e.g. Cobb Coin, Inc. v. Unidentified, Wreck and Abandoned Sailing Vessel,* 525 F. Supp. 186 (S.D. Fla. 1981) and 549 F. Supp 540 (S.D. Fla. 1982) [Florida state lands]; *Klein v. Unidentified, Wreck and Abandoned Sailing Vessel,* 568 F. Supp. 1562 (S.D. Fla. 1983), *aff'd,* 758 F.2d 1511 (11th Cir. 1985) [Biscayne National Park]; *Maritime Underwater Surveys v. Unidentified, Wreck and Abandoned Sailing Vessel,* 717 F.2d 6 (1st Cir. 1983) [Massachusetts state lands]; *Chance v. Certain Artifacts Found and Salvaged,* 606 F. Supp 801

(S.D. Ga. 1984), *aff'd,* 775 F.2d 302 (11th Cir. 1985) [Georgia state lands]; *People v. Massey,* 137 Mich. App. 480, 358 N.W.2d 615 (1984) [Michigan state lands]. With the exception of the *Cobb Coin* decision, the courts applied the maritime law of finds to the cases and ruled that, since the items were embedded in the land of the State, the historic shipwrecks belonged to the States. What also evolved from these cases was the legal theory that such long lost vessels had long ago been abandoned and that any claimant to the vessel had to prove that such a vessel had not been abandoned.

C. Abandoned Shipwreck Act

To stop further the constant, and fiscally disrupting, lawsuits against the States when they attempted to protect and preserve historic shipwrecks, the States, along with archaeologists and historians, went to Congress to have that body enact legislation settling the matter. The intent of the States was to have Congress vest absolute title in those historic shipwrecks that had long lain in or on their sovereign submerged lands. In order to reach this goal, the States sought to place into law the "embeddedness" exception of the maritime law of finds, making any claimant to a vessel embedded in State lands show that he had not abandoned the vessel.

On April 28, 1988, President Ronald Regan signed into law the Abandoned Shipwreck Act of 1987. Codified at 43 U.S.C. Section 2101 through 2106, the enactment of the ASA was the culmination of the long history of the States' attempt to resolve the issue of title to historic shipwrecks found abandoned on the States' sovereign submerged lands.[5]

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5 Title to the respective State to these submerged lands was confirmed by Congress in the Submerged Lands Act of 1953, 43 U.S.C. *et seq.*

The ASA refashions the respective ownership rights of the States and the Federal government by asserting Federal title to certain abandoned shipwreck[s] that are located within the submerged lands of a State. Under the ASA, the Unites States "asserts title to any abandoned shipwreck that is embedded in submerged lands of a State" or "on submerged lands of a State and is included in or determined eligible for inclusion in the National Register." 43 U.S.C. Section 2105(a). For those shipwrecks located within the territorial jurisdiction of a State, the United States then transfers title of those vessels to that State, 43 U.S.C. Section 2105(c), retaining title to those shipwrecks located in or on public lands of the United States, 43 U.S.C. Section 2105(d).

Then, to alleviate the States of the constant need to have their titles challenged in federal courts, Congress removed these historic shipwrecks from the application of the maritime law of finds and salvage. 43 U.S.C. Section 2106(a). The substantive and deliberate effect of these provisions is to deprive a cause of action for title to the finder of any shipwreck that is covered under the ASA, and to vest jurisdiction over such claims in the state courts. *See, e.g., Zych v. Unidentified, Wrecked and Abandoned Vessel*, 941 F.2d 525 (7th Cir. 1991).

The effect of the ASA is to end nearly all title disputes in historic shipwrecks by placing presumptive, if not absolute, title to historic shipwrecks in the States. The ASA does not contain a definition of "abandonment." Congress, relying upon the then accepted general maritime law meaning of "abandonment," did not require the original owner to actively disclaim title or ownership, permitting abandonment to be inferred or implied under the factual circumstances. *See* H.R. Rep. No. 100-514(I), 100th Cong., 2nd Sess., *reprinted in* 1988 U.S.C.C.A.N. 365, 366. Conversely, Congress did not place as a burden on the States, and Federal Government, the requirement that each claiming

State prove an express disclaimer of abandonment or an abandonment. Like the rulings of the Fifth Circuit in *Treasure Salvors v. Unidentified, Wreck and Abandoned Sailing Vessel*, 569 F.2d 330, 337 (5th Cir. 1978) and *Klein v. Unidentified, Wreck and Abandoned Sailing Vessel*, 758 F.2d 1511, 1514 (11th Cir. 1985), (stating that to believe that the original owner still had an interest in the shipwreck was "absurd"), Congress' passing of title to the States had the express, result of eliminating any need by the States or Federal Government to prove abandonment.

D. The Court Should Take Review to Settle the Definition of an "Abandoned" Shipwreck Which Directly Affects the Rights of the States and Federal Government

The court below erred in determining when a shipwreck has been "abandoned." It held that an abandonment cannot be inferred as a factual matter from all the distinct circumstances surrounding the particular case. Instead, the court below concluded that no shipwreck is ever "abandoned," within the meaning of federal admiralty law, absent "an owner's express declaration abandoning title." Pet. 27a. That unfortunate ruling, which will surely have capricious effects on judicial administration in this area, is also of great immediate concern to the States and the federal government.

The peculiar new definition of "abandonment" provided by the court of appeals' opinion, in direct contravention to the established meaning in maritime law, has a direct and significant effect on the sovereign and proprietary rights of the States and the Federal Government. The ASA developed a brand-new scheme of federal-state relations in the area of preservation of historic shipwrecks, an area of historic preservation never before directly addressed by Congress, that coordinates the legitimate interests in a framework of

cooperative federalism. 43 U.S.C. §§ 2101-2106 (1988). The ASA is designed to harmonize and clarify the sovereign jurisdictional rights of the States and the Federal Government in these unique properties and encourages the States to create or strengthen their programs of historic prservation of these shipwrecks.[6]

Under the ASA, the ownership or assertion of title to any shipwreck property depends entirely on the construction of the term "abandoned," which alone triggers the statute's application. But that key term is nowhere defined in the ASA itself. Instead, the legislative history indicates that the Federal law was constructed upon the accepted definition of "abandonment" developed in federal admiralty law. Indeed, one of the Committee reports expressly notes that "the term 'abandoned' does *not* require the original owner to actively disclaim title or ownership." H.R. Rep. No. 514(I), 100th Cong., 2d Sess. 2, *reprinted in* 1988 U.S.C.C.A.N. 365, 366. That statement is in direct contravention of the decision below. By contrast, the Report observes that "abandonment or relinquishment of ownership rights may be implied or otherwise inferred." *Id.*

Thus, the main purpose of the ASA will be frustrated if the definition of "abandoned" that the court of appeals codified into law, which fixes its scope and operation, remains subject to continuing uncertainty and disagreement in different venues. As the Report of the House Committee on Interior and Insular Affairs described the background that gave rise to the Act:

> There is currently confusion over the ownership and authority to manage abandoned shipwrecks. States have claimed title to, and regulatory authority over, abandoned historic shipwrecks

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6 *See Abandoned Shipwreck Act Guidelines,* 55 Fed. Reg. 50166, 50122-50125 (1990).

> located on submerged lands under their jurisdiction. The Federal Admiralty Courts have also claimed jurisdiction over the salvage of these resources....
>
> Twenty-seven states have passed legislation concerning historic shipwrecks. Recent court cases have put in question the validity of these various laws.

H.R. Rep. No. 514(I) at 2, *reprinted in* 1988 U.S.C.C.A.N. 365, 366. The decision below is out of step with the ASA and will inevitably recreate all the problems that Congress sought to address in the enactment of the ASA.

The same concerns are amplified in a later report issued by a different House Committee, the Committee on Merchant Marine and Fisheries, on this same legislation:

> The central issue intended to be resolved by the legislation is the ownership and the authority to manage certain abandoned shipwrecks on State lands....
>
> States have been constrained in applying their shipwreck management and preservation laws because of conflicts with federal admiralty principles and mixed judicial decisions....
>
> At a minimum, these decisions have led to confusion over the ownership of, and responsibility for, historic shipwrecks in State waters. This confusion led to the introduction of historic shipwreck legislation in the 97th Congress....

H.R. Rep. No. 514(II), 100th Cong., 2d Sess. 2-3, *reprinted in* 1988 U.S.C.C.A.N. 365, 370-71. Again, if Congress believed it would clear up the confusion surrounding "ownership and the authority to manage abandoned shipwrecks"

by passing the ASA, then the decision below substantially nullifies the salutary effect of that legislation.

Thus, the effect of the decision of the Fourth Circuit Court of Appeals particularly will be to reverse the underlying presumption of the ASA granting title in the States, foster uncertainty in the title of these vessel, again subject the States to lengthy and expensive litigation to quiet title in these vessels, and possibly subject the States, and the United States, to claims by insurance companies of inverse condemnation of historic shipwrecks that have been claimed by the States or made into State parks.

If the Court of Appeals' requirement that abandonment can, in essence, only exist by "an owner's express declaration abandoning title" becomes the law of the land, the States will be in a precarious position. Will the States, which so far have gone to a great deal of public expense to preserve historic shipwrecks and even created state parks around some of these historic shipwrecks,[7] continue to spend today's scarce public dollars if they were uncertain if some unknown claimant may lay claim to a State-protected shipwreck? What right will the States have to prevent such a claimant from excavating a shipwreck if such excavation will cause environmental harm or be a disturbance to other commercial activity? Will the States be subject to inverse condemnation actions if the States desire to protect the vessel and the "owner" wishes to remove it? Finally, will the States be

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7 The creation of such parks and preserves by the States has been directly addressed by the National Parks Service in the *Abandoned Shipwreck Act Guidelines*, 55 Fed. Reg. at 50137-50138. For example, Florida has created three such parks and is working on the creation of a fourth (i.e. Urca de Lima Underwater Archaeological Preserve [Appendix B1], City of Hawkinsville Underwater Archaeological Preserve [Appendix B2]), North Carolina has one (USS HURON Historic Shipwreck Preserve [Appendix B3]), and New Hampshire has created four (i.e. The "PHOENIX" Underwater Historic Preserve [Appendix B4]). See also Appendix C, a listing of public and private museums specializing in maritime history.

required to initiate "quiet title" cases in court to force the "owner" to set forward to claim the vessel?

The ASA, by recognizing the past practices and decisions of the First, Fifth and Eleventh Circuit Courts of Appeals, brought to the States the stability and certainty necessary for the States to proceed with the expenditure of public funds for the protection of historic shipwrecks. To lose that certainty and place the States in a position of not knowing "if" an "owner" still exists will result in the halting of most of the now on-going State historic shipwreck protection programs.

All of these careful changes in substantive and jurisdictional law mapped out by Congress in the ASA are undercut as long as confusion remains over the proper definition of the term "abandoned." The ability of the States to fulfill the role envisioned in this constructive exercise in cooperative federalism is hamstrung by this initial obscurity, *in each instance*, about whether ownership and authority over a shipwreck is governed by the definition contemplated in the ASA or instead by further unpredictable manipulation of the law of admiralty in the federal courts. That issue has important practical consequences and should be resolved.

II. THE COURT HAS CONSTITUTIONAL RESPONSIBILITIES AS TO CASES IMPINGING ON THE UNIFORMITY OF ADMIRALTY LAW AND ON THE INTERSTICES OF FEDERAL AND STATE APPLICATION OF THE GENERAL MARITIME LAW

The Abandoned Shipwreck Act of 1987 was passed, in part, to remove a grave conflict between the Article III admiralty jurisdiction of the federal judiciary, and the claims of the States to management and ownership of long-lost

and abandoned shipwrecks in state coastal and territorial waters. *See, e.g., Florida Dept. of State v. Treasure Salvors, Inc.*, 458 U.S. 670 (1982). The conflict had created a repeated series of conflicts reaching constitutional dimensions, implicating the interplay between the Eleventh Amendment immunities of the States and the admiralty jurisdiction of the federal courts. *See, e.g., Zych v. Unidentified, Wrecked and Abandoned Vessel; Maritime Underwater Surveys v. Unidentified, Wrecked and Abandoned Sailing Vessel, supra; Jupiter Wreck, Inc. v. Unidentified, Wrecked and Abandoned Sailing Vessel,* 691 F. Supp. 1377 (S.D. Fla. 1988). *See also* Herbert R. Baer, *Admiralty Law of the Supreme Court* § 33-1 (3d ed. Supp. 1985). Congress and the President were determined to remove the tension, by removing the category of abandoned historic shipwrecks from the scope of the dispute between powers of the States and of admiralty jurisdiction.

The Court's attention is particularly warranted by the scope of the decision below in defining the substantive rules of admiralty law regarding abandonment of long-lost historic shipwrecks and other items that have remained, untouched, on the seabed floor for many decades. As this Court has pointed out:

> Article III of the Constitution vested in the federal courts jurisdiction over admiralty and maritime cases, and, since that time, Congress has left to this Court the responsibility for fashioning the controlling rules of admiralty law. This Court has long recognized its power and responsibility in this area and has exercised that power where necessary to do so.

Fitzgerald v. United States Lines Co., 374 U.S. 16, 20 (1963). *See also S.W. Sugar & Molasses Co. v. River Term. Corp.*, 360 U.S. 411, 415 (1959) ("The issue is one of importance in

the development of the law maritime, as to which we have large responsibilities, constitutionally conferred....")

The Court's constitutional responsibilities are made all the more significant where, as here, the implications of the decision may substantially affect a federal statute and the uniformity of the general maritime law, or otherwise impinges on the interstices of federal and state application of the general maritime law in light of the Abandoned Shipwreck Act of 1987. *See generally Romero v. International Terminal Operating Co.*, 358 U.S. 354, 371; *reh'g denied,* 359 U.S. 962 (1959).

III. AT THE VERY LEAST, THE COURT SHOULD NOT DECLINE REVIEW OF THIS CASE WITHOUT FIRST SOLICITING THE VIEWS OF THE UNITED STATES GOVERNMENT ABOUT THE EFFECT OF THE DECISION BELOW ON THE ABANDONED SHIPWRECK ACT OF 1987 AND THE UNITED STATES

For the reasons stated above, the Court should grant review to remove the practical difficulties of inconsistent decisions affecting the application of the ASA. The disagreement over how to identify an "abandoned" shipwreck totally undermines the efficacy of the Federal law, and leaves the States unable to be certain when they may exert ownership over such property. But the problems thus raised are not confined to the States; they will have detrimental effects on the United States as well.

As stated in 43 U.S.C. 2105(d), Congress retained for the United States title to those historic abandoned shipwrecks that lay in or on the public lands of the United States (i.e., National Parks, National Marine Sancutaries and National Seashores). Historic shipwrecks have been located on these

public lands (i.e., Isle Royale National Park, Biscayne National Park [*Klein v. Unidentified, Wrecked and Abandoned Sailing Vessel,* 758 F.2d 1511 (11th Cir. 1985)], Florida Keys National Marine Sanctuary [*United States v. Fisher*, USDC, S.D. Fla. Case No. 92-10027-CIV] and Cape Canaveral National Seashore [*Lathrop v. Unidentified, Wrecked and Abandoned Sailing Vessel,* U.S.D.C. Md. Fla., Case No. 88-37-CIV-ORL]).

At the very least, therefore, if the Court is uncertain about whether to grant review in this case, the States strongly urge the Court to solicit the views of the United States Government. As noted above, the decision below has imparted an unusual and unjustified reading to a key term in a Federal statute, thus, having an effect on the United States' claim of ownership of historic shipwrecks located on public lands. The operation of the statute is extended by authorization for the National Park Service to issue guidelines to the States "for the comprehensive management of underwater resources related to historic shipwrecks." 43 U.S.C. § 2104. Any management program of the National Park Service or guidelines it issues will be affected by the decision below. In addition, the Federal Government stands in the shoes of the States, and must confront all the same perplexities, insofar as it is charged with responsibility for territorial government over such maritime possessions as Puerto Rico, Guam, the Virgin Islands, and others, each of which is defined as a "State" within the meaning of this statute. § 2102(e), (f).

For these reasons, the State Attorneys General respectfully urge the Court not to deny review of this case without at least calling for the views of the Solicitor General about whether the central legal issue warrants review as it affects the United States Government.

IV. CASES INVOLVING FEDERAL STATUTORY EFFORTS TO ACHIEVE COOPERATIVE FEDERALISM WITH AND AMONG THE STATES ARE ESPECIALLY IMPORTANT IN WARRANTING THIS COURT'S REVIEW

Finally, the decision below theatens a Congressional framework created to facilitate State and Federal protection and preservation of historic abandoned shipwrecks. The dispute here over the meaning of the term "abandonment," which is of immediate importance to the States and the Federal Government, thus has a special claim to this Court's attention because it implicates potential disputes not simply among individuals, but over the very concept of governmental protection of sunken historic shipwrecks. This Court has a special role in resolving such conflicts as the only practical alternative to a collision by force. *See Georgia v. Tennessee Copper Co.*, 206 U.S. 230, 237 (1907) (Holmes, J.).

The Court has recognized the special importance of similar controversies under the Submerged Lands Act, 43 U.S.C. §§ 1301-1356 (1988) (hereinafter "SLA"). The SLA is the forerunner to the Abandoned Shipwreck Act, establishing as it did a cooperative framework for settling State ownership over natural resources and submerged lands located nearest their shores. The ASA builds upon and extends the principles of the Submerged Lands Act beyond their original context to "non-natural objects such as shipwrecks that rested on or within submerged lands." H.R. Rep. No. 514(II) at 2, *reprinted in* 1988 U.S.C.C.A.N. 365, 370.

The Court has resolved numerous cases involving the Submerged Lands Act, thus putting to rest disputes that may be thought to raise potential clashes among sovereign powers. *See, e.g., United States v. Louisiana*, 470 U.S. 93 (1985); *United States v. Maine*, 469 U.S. 504 (1985); *California ex rel. State Lands Comm'n v. United States*, 457 U.S. 273

(1982); *United States v. Florida*, 425 U.S. 791 (1976). Many cases involving submerged lands were not direct controversies between sovereign entities within the Court's original jurisdiction, yet raised questions of that character significant enough to warrant review. *See, e.g., Offshore Logistics, Inc. v. Tallentire*, 477 U.S. 207 (1986); *Gulf Offshore Co. v. Mobil Oil Corp.*, 453 U.S. 473 (1981); *Oregon ex rel. State Land Bd. v. Corvallis Sand & Gravel Co.*, 429 U.S. 363 (1977); *Chevron Oil Co. v. Huson*, 404 U.S. 97 (1971); *Rodrigue v. Aetna Casualty & Sur. Co.*, 395 U.S. 352 (1969). The importance of the issues raised for the State and Federal governments is thus established by the Court's frequent interventions in this area.

Similarly here, where the very framework of a Federal statute balancing the jurisdiction of the State and Federal Governments under federal law is threatened by a disuniformity of lower court decisions, review by this Court is warranted. The importance of the matter is not reduced because man-made artifacts are at stake rather than natural resources, since the value of these long-lost materials may often be even greater, as is true in this case. In any event, the importance of the legal issues, and the central need to resolve and clarify the uniform application of the Federal law and its framework of title, propetction and procedure, is the same under each statute.

CONCLUSION

Because the Court of Appeals' decision will have unintended results on the States and because that decision conflicts with decisions of other circuits, this Court should grant the Petitioner's Petition for Writ of Certiorari.

Respectfully submitted,

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No. 92-1189

IN THE

Supreme Court of the United States

October Term, 1992

COLUMBUS-AMERICA DISCOVERY GROUP, INC.
Petitioner,

v.

ATLANTIC MUTUAL INSURANCE COMPANY, *et al,*
Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals For the Fourth Circuit

BRIEF IN SUPPORT OF GRANTING THE PETITION FOR A WRIT OF CERTORARI

APPENDICES

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APPENDIX A

STATE HISTORIC PRESERVATION LAWS

The following is a compilation of state and territorial laws concerning the claiming the of title to and preservation of sites, properties, objects and artifacts having cultural, historic or archeological value. Many of these laws expressly claim title to "underwater" historic site and artifacts without expressly stating historic shipwrecks. THOSE STATE AND TERRITORIAL LAWS THAT SPECIFICALLY CLAIM TITLE TO AND/OR PROTECT AND PRESERVE HISTORIC SHIPWRECKS ARE DENOTED BY THE ADDITION OF AN (*) AT THE STATE LAW CITATION.

STATES:

ALABAMA:	ALA. CODE Sec. 41-3-1 through Sec. 41-3-6 (1982) and (*)Sec. 41-9-249.1 (1982)
ALASKA:	ALASKA STAT. Sec. 41.35 *et seq.* (1988)
ARIZONA:	ARIZ. REV. STAT. Sec. 41-841 thru Sec. 41-847 (1988) ((*)Sec.41-841)
ARKANSAS:	ARK. STAT. ANN. Sec. 13-6-301, *et seq.* and Sec. 13-7-101, *et seq.* (1987)
CALIFORNIA:	CAL. PUB. RES. CODE Sec. 5097 *et seq.* (*)Sec. 6309, (*)Sec. 6313 and (*)Sec. 6314 (West 1991 Supp.)
COLORADO:	COLO. REV. STAT. Sec. 24-80-401 thru Sec. 24-80 410 (1988)
CONNECTICUT:	CONN. GEN. STAT. ANN. Sec. 10-381 *et seq.* (West 1991 Supp.)

DELAWARE:	DEL. CODE ANN, tit. 7, Sec. 5301 *et seq.* and tit. 29, 551 *et seq.* (1989)
FLORIDA:	FLA. STAT. Sec. 267.061 thru Sec. 267.152 (1989) ((*)267.061(b)
GEORGIA:	GA. CODE ANN. Sec. 12-3-52 thru Sec. 12-3-54 and (*)Sec. 12-3-80 thru (*)Sec. 12-3-83 (1988)
HAWAII:	HAWAII REV, STAT. Sec. 6E-1 thru Sec. 6E-15 (1985)
IDAHO:	IDAHO CODE Sec. 67-4113 thru Sec. 67-4122 (1989)
INDIANA:	IND. CODE (*) Sec. 14-3-3.3-1 thru Sec. 14-3.3-18 and Sec. 14-3-3.4-1 through 14-3-3.4-20 (1990)
KANSAS:	KAN. STAT. ANN. Sec. 75-2715 thru Sec. 75-2726 (1989)
KENTUCKY:	KY. REV. STAT. ANN. Sec. 166.705 thru Sec 164.735 (Michie 1987)
LOUISIANA:	LA. STAT. ANN., R.S. 41:1601 through Sec. 41:1614 (1990) ((*)Sec. 41:1605)
MAINE:	ME. REV. STAT. ANN. tit. 27, Sec. 371 - Sec. 378 (1988)
MARYLAND:	MD. HOUS. & DEV. CODE ANN. ART.83B, (*) Sec. 5-601 *et seq.* (1991 Supp.)
MASSACHUSETTS:	MASS. GEN. LAWS ANN. (*) ch. 6, 179-180; ch. 9, 26A-C; ch. 9, 27-27C; and ch. 91, 63 (1986)

MICHIGAN:	MICH. COMP. LAWS (*) Sec. 299.51 - Sec. 54, ch. 399 ((*) Sec. 399.301-399.410) (1991 Supp.)
MINNESOTA:	MINN. STAT. Sec. 138.31 - Sec. 138.42 and 138.51 *et seq.;* ch. 116 (1990)
MISSISSIPPI:	MISS. CODE ANN. 39-7-1 *et seq.*, (*)Sec. 39-7-3 and (*)Sec. 39-7-9 (1990)
MONTANA:	MONT. CODE ANN. Sec. 22-3-421 thru Sec. 22-3-442 (1990)
NEVADA:	NEV. REV. STAT. Sec. 381.195 thru Sec. 381.227 (1986)
NEW HAMPSHIRE:	N.H. REV. STAT. ANN. ch. 227-C (1989)
NEW JERSEY:	N.J. ADMIN. CODE 7:7E-3.18 (1991)
NEW MEXICO:	N.M. STAT. ANN. Sec. 18-6-1 thru Sec. 18-6-17 (1991)
NEW YORK:	N.Y. PARKS AND RECREATION LAW 14.01 *et seq.* (McKinney 1984)
NORTH CAROLINA:	N.C. GEN. STAT. Sec. 70-10 thru Sec. 70-20; and (*) Sec. 121-22 *et seq.* (1991)
NORTH DAKOTA:	N.D. CENT. CODE ch.'s 55-02, 55-02.1, 55-03, 55-10, 55-02-07, 55-03-01, 55-10-02, 55-10-08 and 55-10-10 (1978)
OHIO:	OHIO REV CODE ANN. Sec. 149.51 *et seq.* (Page 1990)

OKLAHOMA:	OKLA. STAT. tit. 53, Sec. 1.1 *et seq.* and Sec. 361 (1991)
OREGON:	OR. REV. STAT. Sec. 358.905 thru Sec. 358.955 and 390.235 (1987)
PENNSYLVANIA:	PA. STAT. ANN. tit 37, Sec. 101 - Sec. 104 and Sec. 701 - Sec. 705 (Brig NIAGARA) (Purdon 1991 Supp.)
RHODE ISLAND:	R.I. GEN. LAWS Sec. 42-45.1 - Sec. 42-45.1-13 ((*)Sec. 42-45.1-4) (1988)
SOUTH CARLOINA:	S.C. CODE ANN. (*)Sec. 54-7-400 thru (*)Sec. 54-7-500 (1990 Supp.)
SOUTH DAKOTA:	S.D. CODIFIED LAWS ANN. ch.'s 1-19A, 1-19B and 1-20 (1985)
TENNESSEE:	TENN. CODE ANN. Sec. 11-6-101 thru Sec. 11-6-119 (1991 Supp.)
TEXAS:	TEX. NAT. RES. CODE ANN. (*) ch. 191 (Vernon 1978)
UTAH:	UTAH CODE ANN. Sec. 63-18-18 thru Sec. 63-31 (1989)
VERMONT:	VT. STAT. ANN. tit. 22, Sec. 701 *et seq.* (1987)
VIRGINIA:	VA. CODE Sec. 10.1-2200 thru 10.1-2404 (*) 10.1-2214 (1989)
WASHINGTON:	WASH. REV. CODE ch. 27.53 (1982) and (*) Sec. 27.53.045 (1991 Supp.)
WEST VIRGINIA:	W.VA. CODE 29-1-8b (1991 Supp.)
WISCONSIN:	WIS. STAT. ANN. Sec. 44.47 (West 1990)

WYOMING:	WYO. STAT. Sec. 36-1-114 thru Sec. 36-1-116 (1977)
TERRITORIES:	
GUAM:	GUAM GOV'T CODE Sec. 13985 *et seq.* (1990)
PUERTO RICO:	P.R. LAWS ANN. tit. 23, 161-186 (1987)
NORTHERN MARIANA ISLANDS:	P.L. No. 2-7, tit. 2, CMC Section 1100 *et seq.* (1990)

APPENDIX B

Urca de Lima

UNDERWATER ARCHAEOLOGICAL PRESERVE

FLORIDA DEPARTMENT OF STATE
Jim Smith, Secretary of State
Division of Historical Resources
Bureau of Archaeological Research

Placing replica cannons on the site. Left to right: Pete DuBus and Herman Summerlin, Seven Seas Construction Company; Claude Davis, St. Lucie County Historical Commission; Tom Gore, Florida Department of State; Glen Brough, Seven Seas Construction Company.

Urca de Lima

She was built strong, heavily planked to ride through ocean swells. *Urca de Lima* (named after her owner Miguel de Lima y Melo), was part of a Spanish merchant convoy commanded by *Capitan General* Don Juan de Ubilla. She was also known as the *Nao de Refuerzo*, perhaps because she had been reinforced for the Atlantic trade routes. *Urcas* were flat-bottomed, round-bellied storeships originally designed to ply the shallow waters off the Flemish coast. Due to their cargo carrying capacity, they soon were adopted for the Spanish-American trade between Europe and the New World.

Loaded with the products of Mexico and Manila, Ubilla's *flota* of ships rendezvoused in the summer of 1715 with the South American squadron of Antonio de Echeverz at Havana to begin the long voyage back to Spain. The combined fleet of eleven vessels set sail from Cuba on the 24th of July, assisted in their northerly course through the *Canal de Bahama* by the Gulf Stream. But they were never to reach the open ocean.

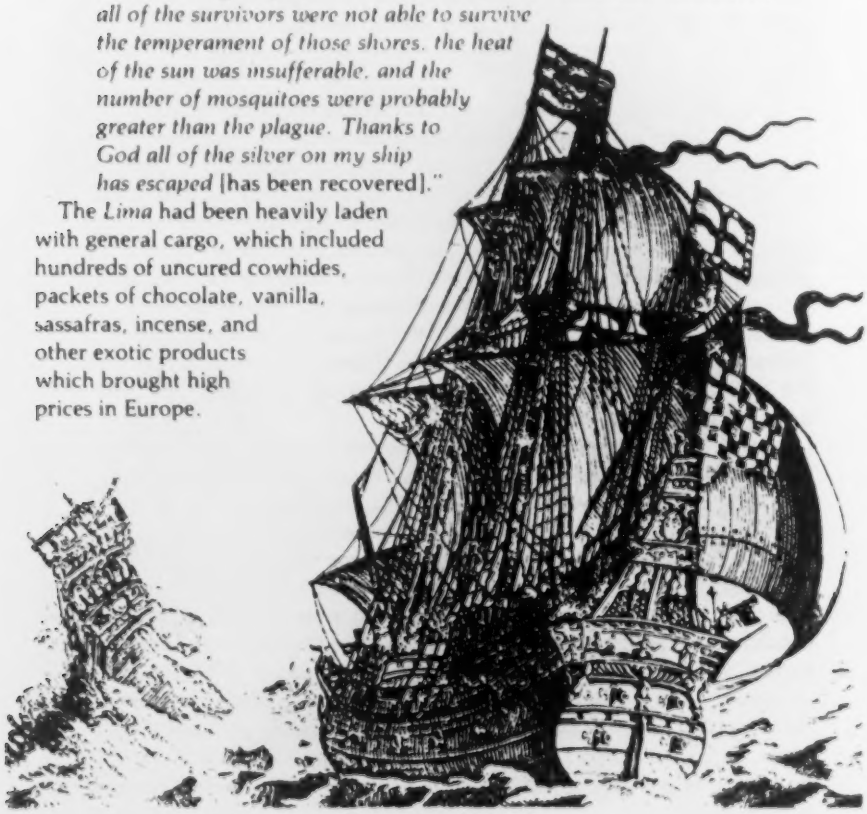
Only a few days out, the *flota* was struck by a fierce hurricane off the coast of Florida. Miguel de Lima later described what happened:

> *"The sun disappeared and the wind increased in velocity coming from the east and east northeast. The seas became very giant in size, the wind continued blowing us toward shore, pushing us into shallow water. It soon happened that we were unable to use any sail at all, making bare our yards, mostly due to the wind carrying away our sails and rigging, and we were at the mercy of the wind and water, always driven closer to shore. Having then lost all of our masts, all of the ships were wrecked on the shore, and with the exception of mine, broke to pieces. We lost only thirty seamen and marines, who were carried away by waves while in the waist of the ship. My ship is at Palmar de Ays in 27 degrees and 15 minutes at the mouth of a river."*

Grounded by the storm, but left relatively intact, *Urca de Lima* provided survivors from the other wrecked ships with victuals from her stores until supplies finally arrived from Havana thirty-one days later. In the meantime, the castaways began to bury their dead and collect what valuables they could from debris washed ashore.

> *"On these deserted beaches, which were very barren and dry, God permitted us to find sweet water, enough to drink, by making wells the height of a man, which were called "casimbas." However, all of the survivors were not able to survive the temperament of those shores, the heat of the sun was insufferable, and the number of mosquitoes were probably greater than the plague. Thanks to God all of the silver on my ship has escaped* [has been recovered]."

The *Lima* had been heavily laden with general cargo, which included hundreds of uncured cowhides, packets of chocolate, vanilla, sassafras, incense, and other exotic products which brought high prices in Europe.



Unlike other ships in the stricken *flota*, she carried no royal treasure, only private silver in sacks and chests. It was probably her stout hull that had saved much of her contents from being dashed away in the storm. She was the first of the fleet wrecks to be salvaged by Spanish crews from Havana, but was then burned to the waterline to conceal her position from English freebooters, who also began to arrive at the scene. Although many precious goods were recovered from the wrecksites shortly after the disaster, salvage attempts soon ended as turbid sand engulfed the remnants of the lost ships and their cargos.

Some fifty years later marine surveyor Bernard Romans was sent to Florida to map the little-known coastline for the British Crown. When he reached the beaches of "Palmar de Ais," his survey crew found the remains of an old shipwreck inshore of the shifting sand bars at the mouth of an inlet. It was the *Urca de Lima*. The men collected Spanish coins on the beach and lived on turtle eggs and bear meat as they completed mapping the region.

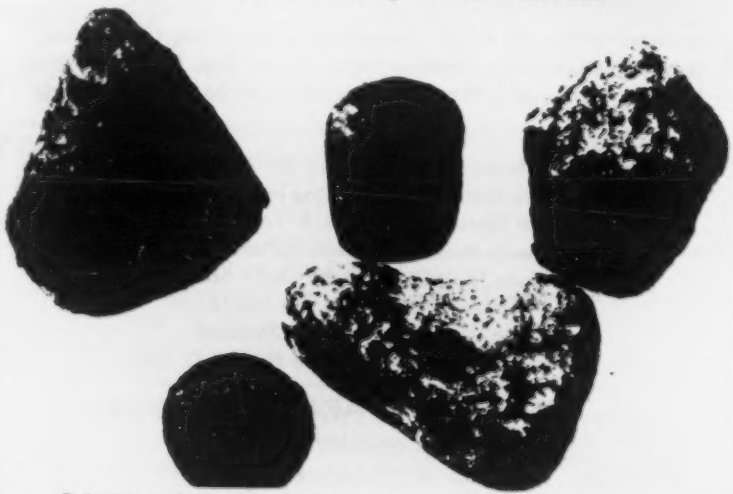
Reports from the coast between Sebastian and Ft. Pierce inlets in the early 1800s indicate that the ships of the 1715 fleet were known to have been lost in that area. However, in 1837 John L. Williams published the *Territory of Florida*, a book that gained widespread popularity but mistakenly placed the location of the 1715 wrecks in the Florida Keys—an error that would continue on "treasure" maps published as late as the 1960s. By 1892 the original inlet at Ft. Pierce had filled with sediment and had become part of the present beach. The wreck of the *Urca de Lima* once again was forgotten.

Then, in 1928 an adventurer named William J. Beach arrived in Ft. Pierce with tales of man-eating sharks and Spanish gold. Equipped with hard-hat diving gear and a metal detecting device, he led city officials to the ballast pile of the *Urca de Lima*, the first of the fabled 1715 fleet shipwrecks to be rediscovered. As many as sixteen cannons and four anchors were raised from the wrecksite, some of which can still be seen today in front of the Ft. Pierce City Hall. Word of the wreckage spread, and in 1932 the first salvage permit was issued to search for and to recover Spanish treasure. But it was not until 1951 that a Captain Steadman A. Parker announced that he had located the flagship and other wrecks from the 1715 fleet, and managed to secure three salvage leases between 1950 and 1952 to work on them.

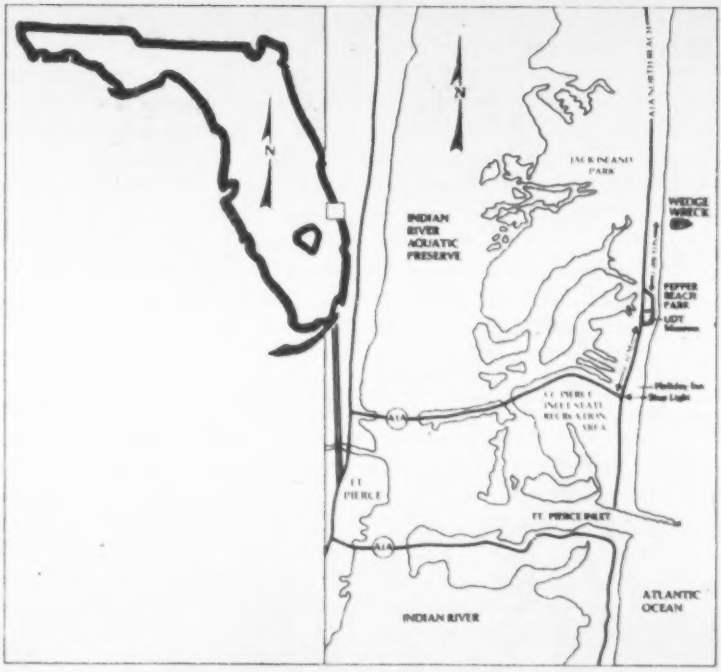
In 1955 Jack Carr and Silas Thomas received a salvage permit on the *Urca de Lima*. Since most of her cargo had been recovered by the Spaniards, modern salvage efforts were only marginally successful, producing only one silver bar, two silver wedges and five iron cannons. The silver wedges gave rise to the site's modern name, the Wedge Wreck. In 1959 Kip Wagner and "Doc" Kelso formed a company which they named Real Eight, after the "pieces of eight" they had found in the sand south of Sebastian Inlet. Under contract with the State of Florida, work began in earnest on the 1715 wrecksites. The first years of salvage (1960-1962) saw continued work on the *Urca de Lima*; however, more productive sites soon captured the salvors' attentions, and the *Lima* was once again left alone. In 1983 and 1984 the last salvage licenses were granted on the *Urca de Lima*, and in 1985 her surviving hull structure was carefully mapped and recorded.

"Part of the Province of East Florida." Bernard Romans, 1774. At the River St. Sebastian Roman notes "Opposite this River perished the Admiral commanding the Plate Fleet 1716, the rest of the Fleet 14 in number, between this and Bleech Yard."

Cannons salvaged from the Wedge Wreck in the late 1920s.



Bulk silver wedges and pieces of the type recovered from the *Urca de Lima*



How to find the

Urca de Lima

Follow Highway A1A north from the Ft. Pierce Inlet to Pepper Park. Walk northward along the beach approximately 1,000 yards from the park boundary. The wrecksite lies on the first offshore reef in 10-15 feet of water, some 200 yards from shore.

Please anchor only at the marker buoy to avoid disturbing the remains of the ship, and remember to display a "divers down" flag. No spear fishing is allowed within a 100-foot radius of the site.

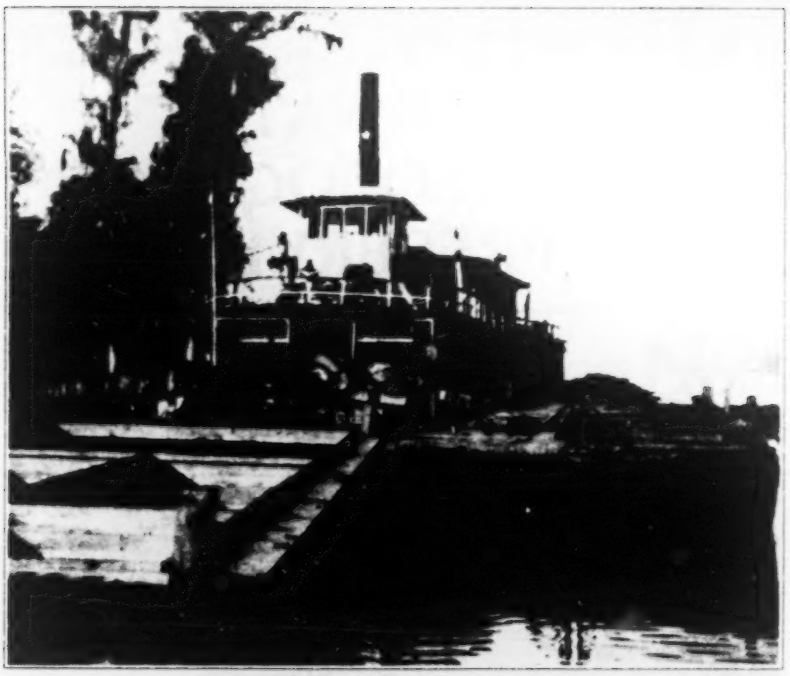
Interpretive displays of materials from the 1715 treasure fleet can be seen at the following locations:
Museum of Florida History (R.A. Gray Building, 500 South Bronough Street, Tallahassee).
McLarty State Museum (Sebastian Inlet State Park, one mile south of Sebastian Inlet).
St. Lucie County Historical Museum (under the east end of Peter P. Cobb Bridge, Ft. Pierce).

FLORIDA DEPARTMENT OF STATE
Jim Smith, Secretary of State
Division of Historical Resources
Bureau of Archaeological Research

APPENDIX B2

CITY OF HAWKINSVILLE
UNDERWATER ARCHAEOLOGICAL PRESERVE

A Joint Project of
FLORIDA DEPARTMENT OF STATE
Jim Smith, Secretary of State
Division of Historical Resources
and
FLORIDA DEPARTMENT OF NATURAL RESOURCES
Division of Recreation and Parks
and
GULF MARINE FOUNDATION, INC.



THE SUWANNEE RIVER

When Stephen Foster's song "Old Folks at Home" was published in 1851, the Suwannee River became immortalized in the hearts of the American people. Even today, Foster's composition still conjures images of this picturesque Florida river bordered by myriad transparent springs and overhanging trees laden with Spanish moss. We can imagine a steamboat making its way downriver during slow-paced days of simple but dependable machinery and the sound of hissing steam and splashing water. A boy and his dog sit under the shade of an oak tree. Echoes of summertime crickets in the shimmering heat are interrupted by a shrill whistle burst as the boat glides into view around the bend. As it passes by, the steam-belching machine rouses a sleeping alligator, which retreats from a sand bar into the cool upwelling depths. The swishing paddlewheels disappear downriver and the crickets resume their symphony.

The evening sunset is overtaken by moonlight, as the boat's unhurried progress carries it through the night. By noon of the next day, the mouth of the river opens into the Gulf of Mexico, flat as glass. As the captain steers south-southwest towards the Cedar Keys, the smell and heat of wood burning under the covered boiler room is noticeable in the calm. The breathless offshore expanse is only broken by distant thunderheads, which promise to break the heat, but may also anger the sea. These images of a steamboat become almost palpable before they evaporate, and we come back into the reality of our own time and place. But they are as much a part of Suwannee River heritage as is Stephen Foster's song.

The Suwannee's unique beauty beckons us to follow its flow downriver, and to allow our imagination to merge with its cool currents. While times have changed along the river banks, relics of the Suwannee's past still survive, hidden below the water's surface.

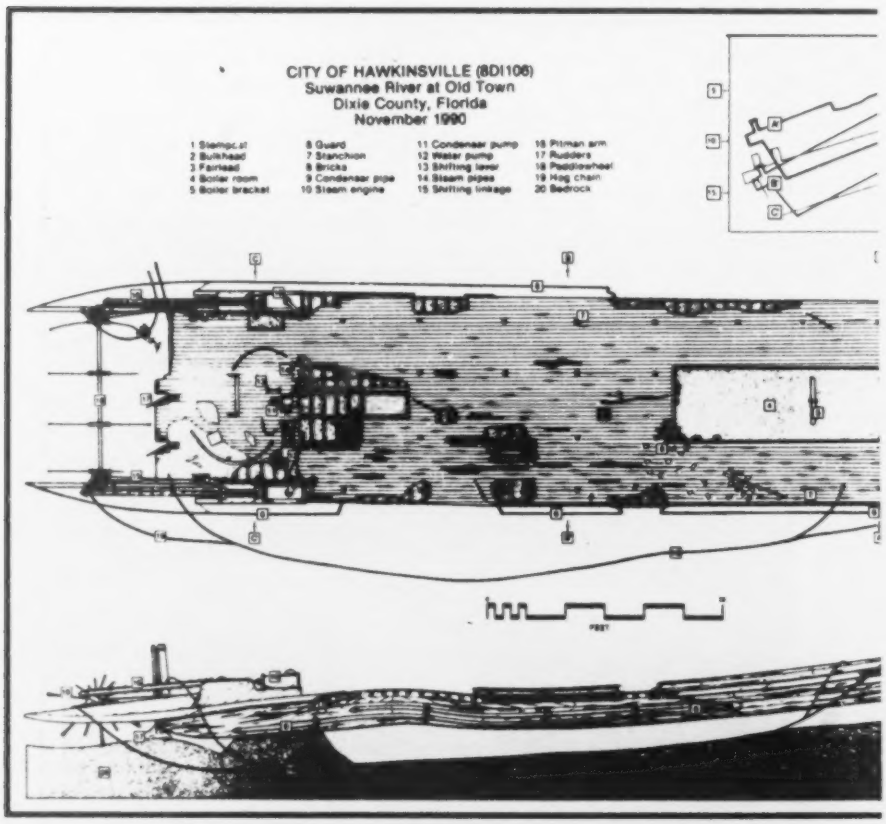
THE SUWANNEE RIVER

From the 17th century onwards, the Suwannee River played an important role in the development of central Florida. Waterborne transport helped to supply the needs of Spanish, British, and Americans. By 1834, an unnamed steamboat was said to be stationed at St. Mark's "for Suwaney" trade.

During the Second Seminole War, the steamer *American* unsuccessfully attempted to chase down a canoe full of Seminoles; the race ended only after the canoe overturned in the swift water of a rocky shoal. Traffic on the river during the war years, 1835 to 1843, centered along the lower river, mostly below present-day Branford. After the Second Seminole War, the need to navigate much farther up river was created by cotton growers around settlements such as the town of Columbus (near present-day Suwannee River State Park). The typical Suwannee River route included a stop at Cedar Keys to allow the shallow draft coastal and river-going craft to dock alongside oceangoing vessels and exchange cargos.

At first the Suwannee settlements mainly were serviced by small sailing vessels but by October 25, 1845, the *St. Augustine News* reported that "it has been in contemplation for some time past to establish a mail route, by steamers, upon the Suwannee from Cedar Keys to Fort White, to be connected thence with the St. Johns by stage . . . The steamboat *Orpheus* has arrived and taken her station on the route. We learned that she is a most beautiful vessel, 136 ft. in length, and is fitted up in fine style with 18 state-rooms. She will carry the U.S. Mail from Cedar Keys up the Suwannee to the flourishing town of Columbus."

Along the upper Suwannee, steamers steered through dangerous rocky shoals to reach Columbus, an area of the river today known for swift water canoeing. In 1847, *Orpheus* was lost at an unspecified location in the river, possibly due to a navigational error on rock shoals. However, by the 1850s, Captain Tucker, owner of the steamer *Madison*, went farther upriver to White Springs, in a successful attempt to have the Suwannee River declared navigable above Columbus.

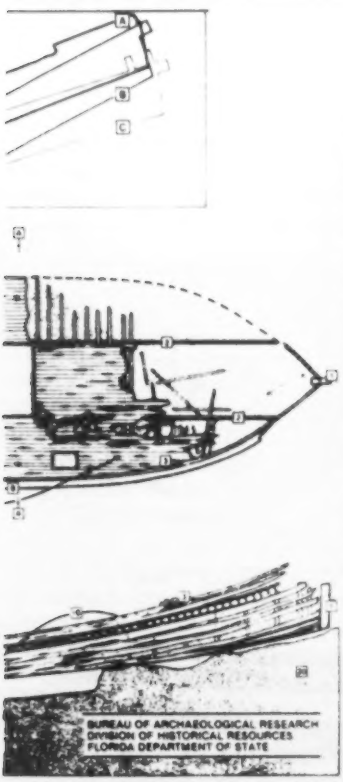


STEAMBOATING ERA

During the Civil War, the port at Cedar Keys fell into Union hands, forcing blockade runners to come into the shallow water approaches of coastal rivers including the Suwannee. As the war dragged on, *Madison* was scuttled in Troy Spring to keep her from falling into Yankee hands and at least two Confederate oceangoing steamers were lost near the mouth of the Suwannee. After the war, there were no known steamboats on the river until the Spring of 1872, when the steamer *Wawenock* began running from New Troy (near Troy Spring) to Cedar Keys.

For the next two decades, steamboating flourished; tourist writer George Barbour noted in 1882 that "the Suwannee River is navigable for small steamboats to the crossing of the Jacksonville, Pensacola and Mobile Railroad (at present-day Suwannee River State Park), and for large steamers to Rowland's Bluff. In the mid-1880s, Captain Bob Ivey moved to Rowland's Bluff, renamed it Branford, and established a steamboat landing adjacent to a new rail line, which ran along the river's bank. By 1888, Ivey also had established a boatyard for the construction of a variety of watercraft, including steamboats, the most famous of which was the *Belle of Suwannee*, a popular honeymoon cruise boat.

The hurricane of 1896 damaged shipping at Cedar Keys, causing the Suwannee steamboat tourist trade to decline. But commercial trade continued to flourish with the growing export of local lumber for general construction, and especially cedar for pencil-making. Gradually, railroads began to replace waterborne transport; but, for almost a hundred years, from 1834 until the 1920s, more than 50 steamboats ran the Suwannee River. Today, the remains of perhaps a dozen steamboats can be found along the river's bottom.



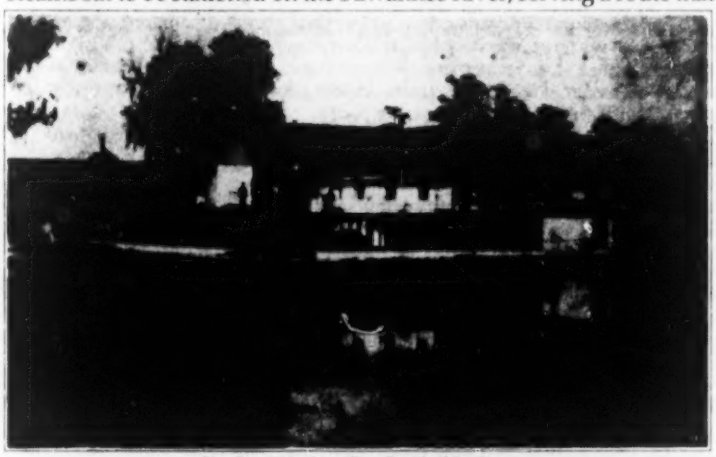
THE VIEW FROM DOWN UNDER

Today, the City of Hawkinsville looks like a story-book ghost ship, lying in shallow water on the west bank of the river south of the railroad trestle at Old Town. The hull of the sunken steamer is virtually intact with her bow pointing upriver. From the stempost, one can swim along the entire deck of the vessel to her stern paddlewheel, exploring numerous deck fittings and steam machinery along the way. Inside darkened hatches, mudfish and catfish make their homes.

Tilting at an angle of 20 degrees to starboard, the steamboat rests on a series of limestone rocks that support the hull above the river bed. The port side of the vessel is partially buried in the river bank. Although the boat's steam boiler has been removed, most of the steam piping remains in place. The main propulsion system, consisting of two enormous horizontal piston engines, each of which drove a long Pitman arm connected to the paddlewheel, is easily recognizable along with its rods and gears. Perhaps the most dramatic features of the wreckage are the four iron sprockets and their wooden spokes that comprised the large paddlewheel that pushed the Hawkinsville up and down the Suwannee.

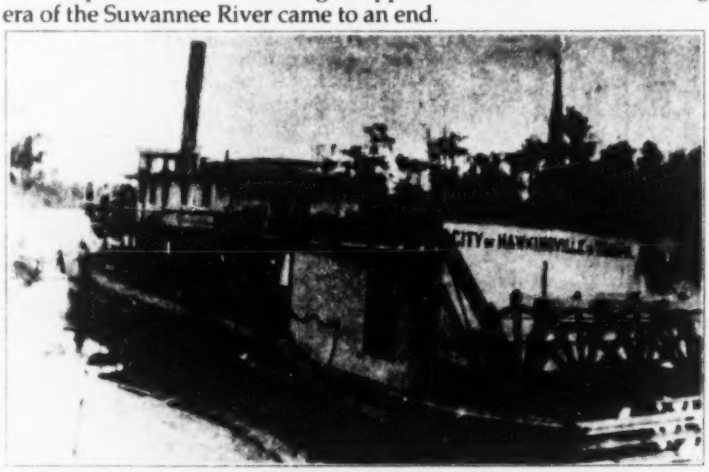
THE *CITY OF HAWKINSVILLE*

The *City of Hawkinsville* is a surprisingly intact survivor of late 19th-century coastal steamboat technology. She was the largest and the last steamboat to be stationed on the Suwannee River, serving a route that



The *City of Hawkinsville* at Branford Station.

included Branford, Clay's Landing, Old Town, and Cedar Keys. Originally built at Abbeville, Georgia in 1896, for the Hawkinsville (Georgia) Deepwater Boat Lines, she was sold in June 1900 to the Gulf Transportation Company of Tampa for use on the Suwannee River. The *City of Hawkinsville* was 141 ft. long, with two decks, a single smoke stack, a square stern, and a molded bow. She was a post-hurricane newcomer, brought into the river to assist a booming lumber industry. Local accounts contend that *City of Hawkinsville* also was instrumental in the construction of the rail bridge at Old Town. In doing so, she quickened her own demise, since the moving of people and goods by rail eventually rendered steamboats obsolete. Although accounts of her last days vary, official registry records indicate that she was in service until May 19, 1922, when her last captain, Mr. Currie, abandoned the vessel and the occupation that could no longer support him. Thus, the steamboating era of the Suwannee River came to an end.



HOW TO FIND THE *CITY OF HAWKINSVILLE*

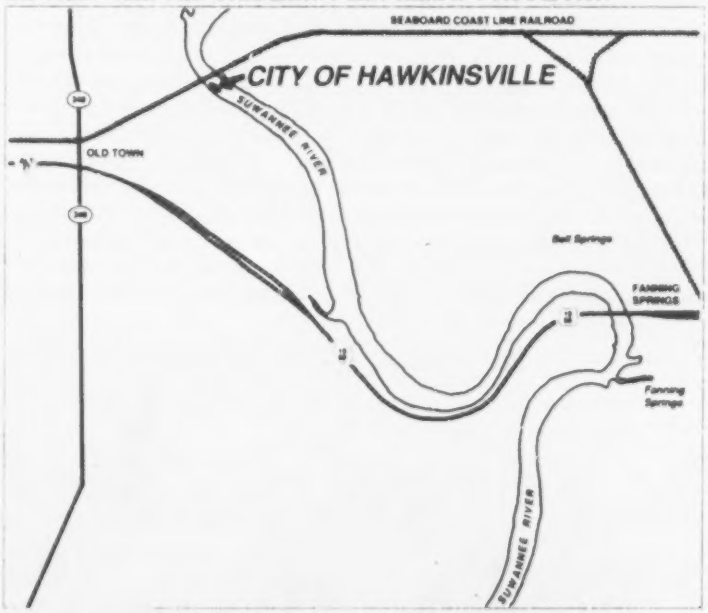
The Hawkinsville is located in shallow water on the western (Dixie County) bank of the Suwannee River, about 100 yards south of the railroad trestle at Old Town. Acces s to the site is by boat only.

The Hawkinsville is marked by a series of buoys on her starboard side, and by mooring bouys approximately 50 feet downstream from her stern. Visitors are asked to tie up to the mooring bouys to prevent anchor damage to the site, and to display a "divers down" flag. Boats are not allowed over the structure of the Hawkinsville shoreward of the marker bouys.

Divers should have advanced open water training before attempting to dive in this dynamic river environment which can change in depth, current velocity and visibility depending on rainfall and runoff. Diving the steamboat is not recommended for novices, or those uncomfortable with limited underwater visibility. Do not dive into or under the hull. Caution should be taken to avoid sharp edges, rough surfaces and stray fishing lines that can be encountered on the wreck. The minimum recommended equipment for a safe dive includes: (1) Full open water SCUBA equipment; (2) Knife; (3) Gloves; and (4) Underwater lights.

Diving should not be attempted on the Hawkinsville when the river is above 4 feet on the gauge at nearby Wilcox Station in Fanning Springs, or if water visibility is less than 3 feet. For information on the river's elevation, call the Suwannee River Water Managment District weekdays at 1-800-226-1066 to ask for the latest river gauge reading at Wilcox Station. Local dive shops can provide information on diving conditions.

The City of Hawkinsville is a well preserved, but fragile piece of Florida's history. Please respect the Underwater Preserve, and leave the site as you found it for others to enjoy. Vandalism should be reported by calling the Florida Game and Fresh Water Fish Commission's alert number 1-800-342-8105.



FLORIDA DEPARTMENT OF STATE
Division of Historical Resources
Bureau of Archaeological Research
R.A. Gray Building
Tallahassee, Florida 32399-0250

APPENDIX B3

THE USS *HURON*

Built a decade after the Civil War, the USS *Huron* was constructed during a period of transition between the old and new navy. The *Huron* and her two sister-ships were the last American naval vessels to be built of iron rather than steel and to be equipped with sails to supplement the ship's steam engine.

During her brief career (1875-1879), the *Huron* visited ports in Mexico, Venezuela, Columbia, Key West, Mobile, Charleston, Norfolk, Washington D.C., Boston, and New York. However, it was the tragedy of the *Huron's* sinking on November 24, 1877 that brought the ship to national attention.

Built: Chester, Pennsylvania, 1875

Length: 175 feet

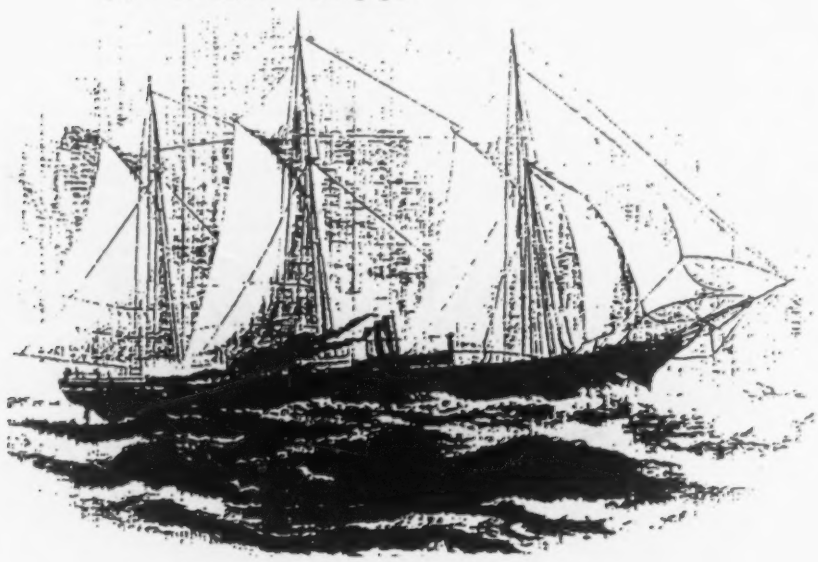
Beam: 32 feet

Draft: 13 feet

Crew: 16 officers
118 enlisted men

Power: A compound steam engine with 5 coal burning boilers and a 12-foot diameter propeller. The *Huron* also had three masts equipped with sails.

Armament:
(1) 11-inch Dahlgren smoothbore cannon
(2) 9-inch Dahlgren smoothbore cannon
(1) 60-pounder Parrot rifle
(1) 12-pounder Dahlgren boat howitzer
(1) 50-caliber Gatling gun



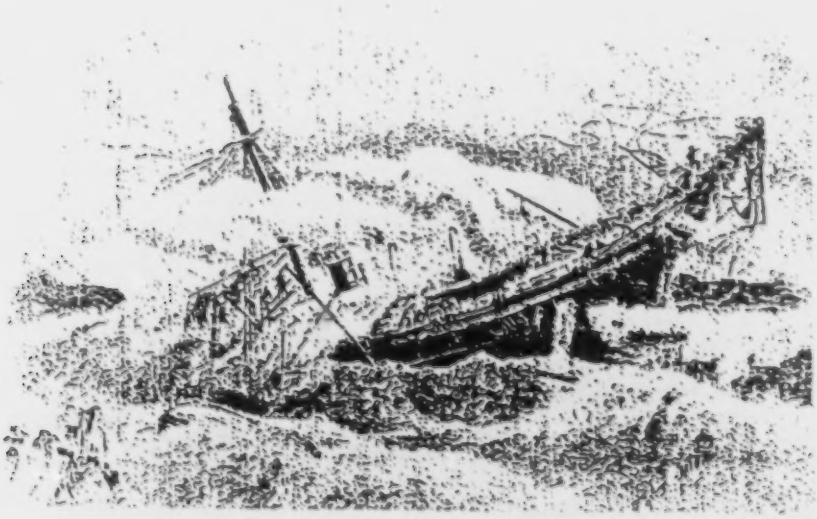
THE WRECK OF THE USS *HURON*

The *Huron* left Hampton Roads, Virginia on Friday, November 23, 1877. She was headed for Havana, Cuba to survey the surrounding coast.

On her first night out to sea, the ship encountered a heavy storm blowing from the Southeast. The storm combined with a small error in the ship's compass to cause the *Huron* to run aground at this site, at 1:30 a.m., November 24, 1877.

Even though the *Huron* was only 200 yards from the beach, the heavy surf, strong currents, and cold temperature prevented most of the crew members from attempting the swim to shore. Most of the crew tried to remain on the ship in the hope that help would arrive. However, no one came to the aid of the sailors since the Lifesaving Stations were closed until December. The elements eventually took their toll on the exposed men. Many lost their strength and were washed overboard by waves. One huge wave swept at least twelve men away at one time. In all, 98 men lost their lives during the night.

The Federal government was severely criticized for its failure to adequately fund the United States Lifesaving Service. Two months after the wreck of the *Huron*, the steamship *Metropolis* ran aground twenty-three miles to the north with the loss of 85 lives. These two disasters prompted congress to appropriate funding to build additional Lifesaving Stations along the North Carolina coast and increase their months of operation.



THE USS *HURON* TODAY

The *Huron* site is located approximately 250 yards from the beach. During the summer months buoys mark the bow and stern of the wreck. Divers and snorkelers who visit the site can see a wide variety of sea life as they swim over the remains of the historic warship. Many portions of the wreck hold points of interest such as boilers, cannonball storage racks, and the huge propeller and rudder.

This drawing and map depict the wreck of the *Huron* as she exists today. During the 1870s, the ship's cannons and much of her machinery were salvaged. Over the years, time and the elements have eroded parts of the ship, however the lower hull is well preserved, and portions of the bow remain intact up to the main deck level.

A thick layer of concretion and marine growth now cover the site hiding many structural features. Because the *Huron* is close to shore, shifting sands are continuously covering and uncovering various portions of the wreck.

All divers should follow safe scuba diving practices and it is strongly recommended that visitors check on conditions with a lifeguard before swimming out to the wreck. No one should ever swim or dive alone!

<u>Collecting artifacts from the wreck is prohibited.</u> If you observe an unusual or important artifact please do not disturb it. Note the artifacts location and report it to local authorities.

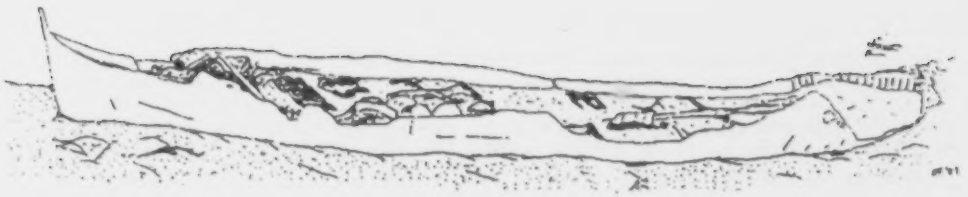
The USS *Huron* is listed on the National Register of Historic Places, and in 1991 the Secretary of the North Carolina Department of Cultural Resources designated the site as North Carolina's first "Historic Shipwreck Preserve". The preserve program is designed to promote the preservation of historic shipwreck sites, while making them more accessible to the general public.

The USS *Huron* Historic Shipwreck Preserve is administered cooperatively by the United States Navy, the Town of Nags Head, and the North Carolina Department of Cultural Resources.

The USS *Huron*, and other shipwreck sites in North Carolina's waters, are protected by State and Federal law. It is illegal to remove artifacts or disturb a shipwreck site without a valid permit.

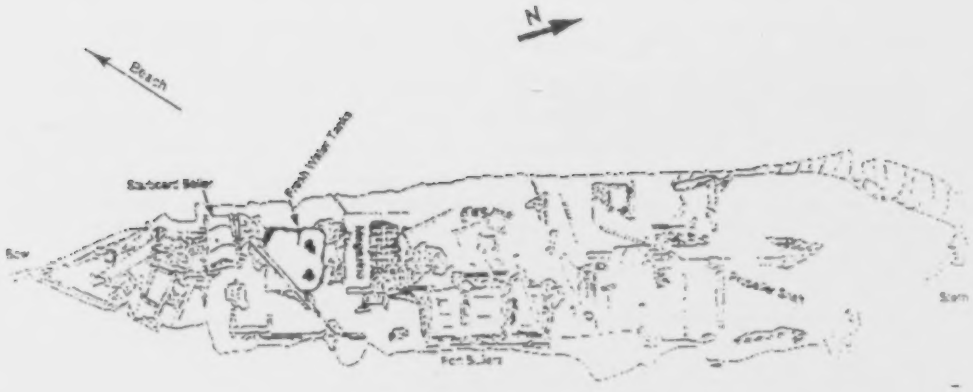
For further information on North Carolina's shipwrecks please contact:

Underwater Archaeology Unit
North Carolina Department of Cultural Resources
P.O. Box 58
Kure Beach, North Carolina 28449



Artist's Sketch of
USS Huron Shipwreck Site
Nags Head, North Carolina
0012SOB

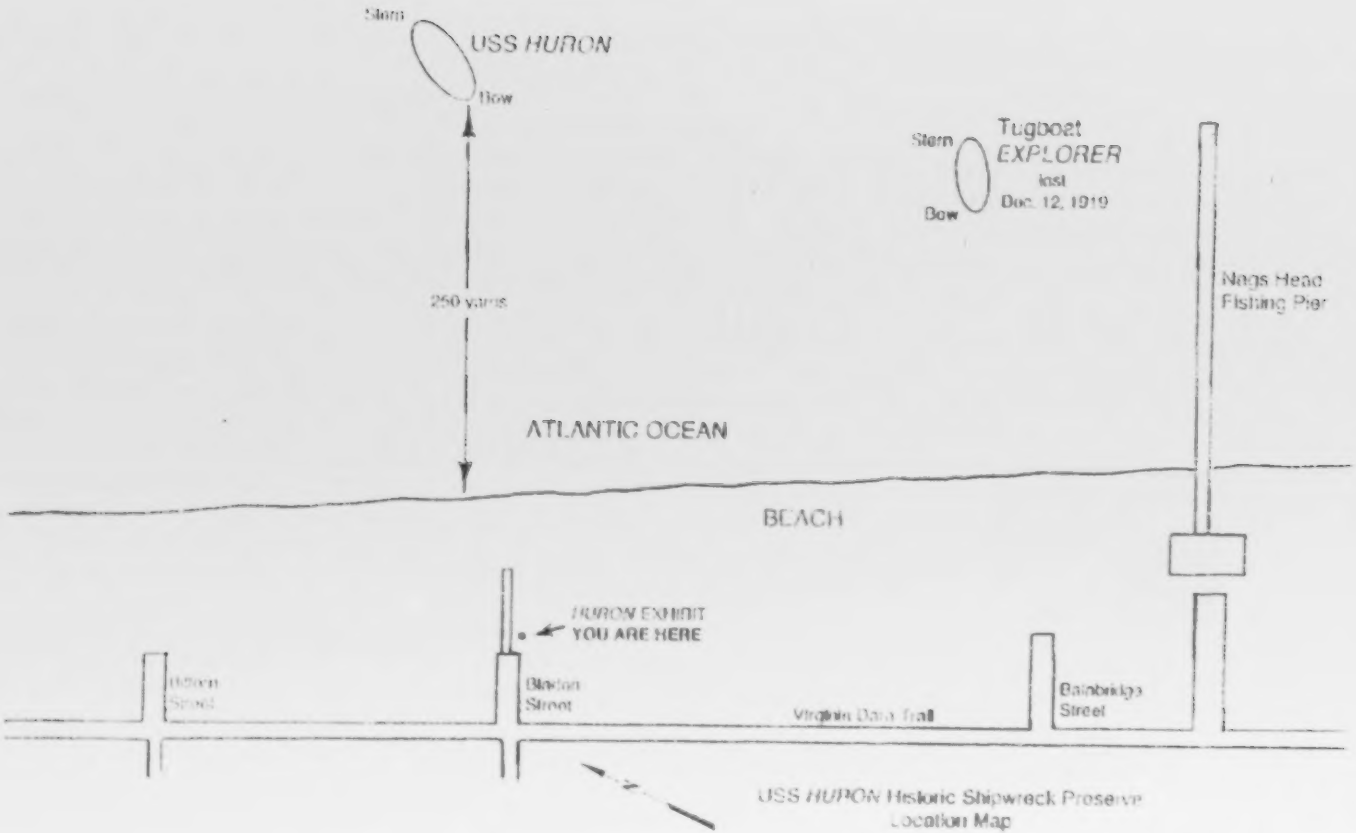
By Joe D. Friday, Jr., 1987



0' 10' 20'
SCALE

USS Huron Shipwreck Site
Nags Head, North Carolina
0012SOB

By Joe D. Friday, Jr., 1987

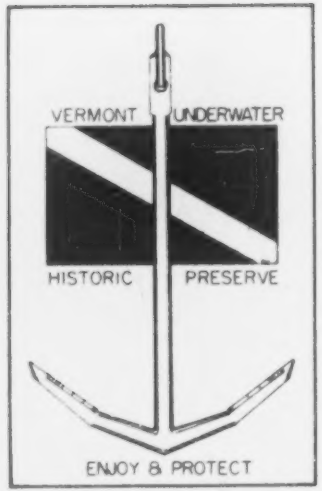

Stern
USS HURON
Bow
250 yards
Stern
Tugboat
EXPLORER
lost
Dec. 12, 1919
Bow
Nags Head
Fishing Pier
ATLANTIC OCEAN
BEACH
HURON EXHIBIT
YOU ARE HERE
Bladen
Street
Virginia Dare Trail
Bainbridge
Street
USS HURON Historic Shipwreck Preserve
Location Map

State of Vermont

The "PHOENIX"

UNDERWATER HISTORIC PRESERVE

INFORMATION and DIVING GUIDELINES



Division for Historic Preservation
Agency of Development and Community Affairs
Montpelier, Vermont

HISTORY OF THE PHOENIX I

The Lake Champlain Steamboat Company began the construction of the lake's second steamboat at Vergennes, Vermont, in 1814. Launched in 1815, Phoenix was 146 feet long, has a displacement of 325 tons, and could reach a speed of 8 knots with her 45 horsepower engine. Commanded by Captain Jehaziel Sherman, the steamer maintained a regular schedule of service, transporting people and freight between Whitehall, New York and St. Johns, Quebec, with stops at other lake ports along the route. On one occasion the Phoenix had the distinction of carrying President James Monroe.

On September 4, 1819 Captain Sherman was ill, and thus the Phoenix made her final, fateful voyage under the command of Sherman's son Richard. Leaving Burlington at 11:00 in the evening for her next destination, Plattsburgh, the steamer headed across the lake with 46 passengers and crew (most of whom were fast asleep). An unusual glow in the amidships galley provided the first warning that a fire had broken out on board, but the discovery was made too late to save the Phoenix. The passengers were rousted from their cabins in the after half of the ship and loaded into two small boats. Unfortunately, in the confusion a dozen people (including the captain) were left to fend for themselves on the burning ship. Sherman and several others were picked out of the lake in the morning, but six others were not so lucky and perished in the lake's cold, dark waters. The cause of the fire was said to have been a candle carelessly left burning in the pantry; however, circumstantial evidence suggests that the fire may have been intentionally set by competing lake shippers.

The abandoned hull drifted onto a reef off Colchester Point, and there burned to the waterline. The valuable engines and boiler were later removed and placed in a new steamboat, the Phoenix II. Winter ice probably dragged the remains of the Phoenix off of the reef and deposited the wreck in its present and final resting place on the north slope of Colchester Shoal.

Features of Interest on the Wreck:

— Size of Wreck: 146' long, 27' wide
— The fire-charred **framing ends** clearly show how the vessel was destroyed by fire and burned to the waterline; the massive **hull** is framed with oak timber.
— The **bow,** at the shallower (60') end of the dive, is prominent, jutting 15' out of the bottom.
— The **rudder hardware** is visible at the stern (110' depth) end.
— The **iron rods** which held the engines and boilers are visible in the central forward section.
— A large, **square hole** in the keelson, about 25' from the bow, is probably the mast step.

EMERGENCY INFORMATION

IN CASE OF EMERGENCY, immediately contact the Coast Guard and/or the State Police Marine Division who can quickly provide assistance.

On **Marine Band radio: use Channel 16** to immediately contact the Coast Guard.

By telephone:

Coast Guard — 864-6791

State Police/Marine Division — 655-3435 (identify the problem to the Operator and they will directly communicate with a nearby Police vessel).

Burlington Area Ambulance — 864-4554 or 911

Medical Center — 656-2345

Divers Alert Network (DAN) — (919) 684-8111

Diving accidents should be handled through the Burlington Medical Center. The nearest recompression chamber is at The University of New Hampshire in Durham.

SPECIAL DIVING CONDITIONS AND GUIDELINES:
The Phoenix Preserve

- Depth of Water: 60' - 110' (bow at 60', stern at 110') Depth will vary according to lake level fluctuations.
- The anchor pad to the Preserve buoy rests at approximately 50' depth.
- Experience level: Advance Divers.
- **REMOVAL OF ARTIFACTS, WOOD AND ANY OTHER OBJECTS AND/OR PIECES OF THE WRECK IS FORBIDDEN BY LAW.**
- Artifact removal or damaging the site is a violation of trust, as well as law, and violators will be prosecuted. Violators also jeopardize the continuing existence of the Preserve system. Take nothing but photos.
- The vessel lies on a slope in 60' - 110' of water; its depth and location on the open lake requires serious dive planning. This dive is only for experienced divers. All dives should be **NO-DECOMPRESSION DIVES** and bottom time should be well within no-decompression limits.
- MONITOR YOUR AIR. This is a deep dive and octopus regulators, pony bottles, or other types of backup breathing systems should be used. It is recommended that you leave the bottom with a minimum air reserve of 500 psi (500 psi is the minimum recommended).
- The dive may be very cold and very dark, depending on the day's conditions. Dry suits are recommended. Monitor your thermal comfort and avoid dangerous chilling.
- Underwater lights are highly recommended. Also, watch for unpredictable, severe weather changes.

CAUTION AND GOOD DIVING PRACTICES SHOULD PREVAIL AT ALL TIMES.

DIVE SAFELY!

PLEASE BE FAMILIAR WITH ALL PRESERVE GUIDELINES IN THE BLUE BROCHURE. 4/91

What Is An Underwater Preserve?

- A Preserve is an underwater historic site that has been designated a protected area of historic and recreational interest to divers.
- Under the 1975 Vermont Historic Preservation Act, all underwater historic sites beneath State waters belong to the State of Vermont in public trust. The State's responsibility is to protect, wisely manage and interpret this public heritage. Establishing a Preserve is one way to accomplish these goals by making it easy for you to safely locate historic wreck sites, by protecting the wrecks from accidental anchor damage, and by helping you to better understand the life and story of each wreck.
- Preserves are identified by Coast Guard-approved, Special Purpose, yellow buoys. These are marked "Underwater Historic Preserve" and are part of a mooring system that provides safe, easy access to wreck sites and helps protect the sites.
- A separate brochure is available for each Preserve.
- The Preserve system is experimental. If abused, this system will be discontinued. If the Preserve system works, we anticipate that divers can look forward to a continuing program, hopefully incorporating more sites in different parts of the lake in the future.

Mooring Guidelines on the Preserve

- This Preserve area is identified by two YELLOW BUOYS marked "State of Vermont Underwater Historic Preserve."
- No anchoring is permitted within 200' of a buoy.
- Divers must tie their boat to a buoy. Only one boat at one time may be tied to a buoy.
- Stay on the buoy only for the duration of the dive.
- Moored boats must fly a "divers down" flag. By law, the boat must also fly the "Alpha" flag.
- Standards, safe diving procedures relating to towing dive flags must be followed.
- No overnight mooring on the buoys.

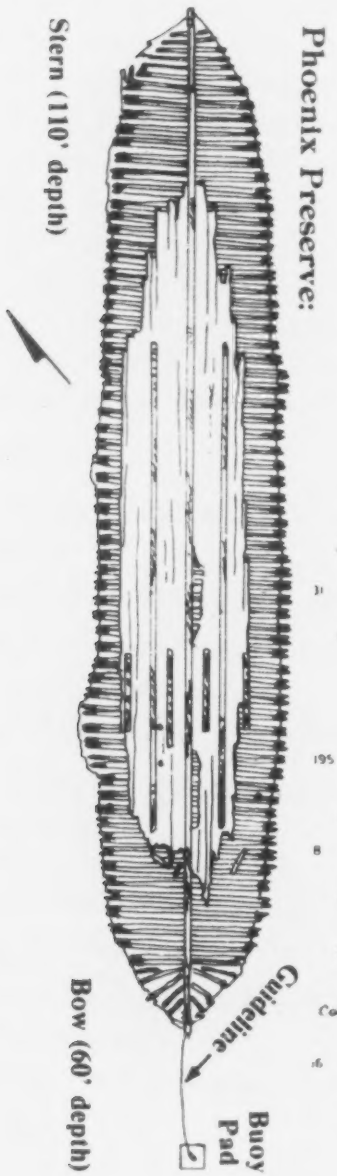
PLEASE BE FAMILIAR WITH ALL PRESERVE GUIDELINES IN THE BLUE BROCHURE.

The Vermont Underwater Historic Preserve system works and succeeds only with your cooperation. Your cooperation and responsibility are necessary to protect both the historic shipwrecks and other divers.

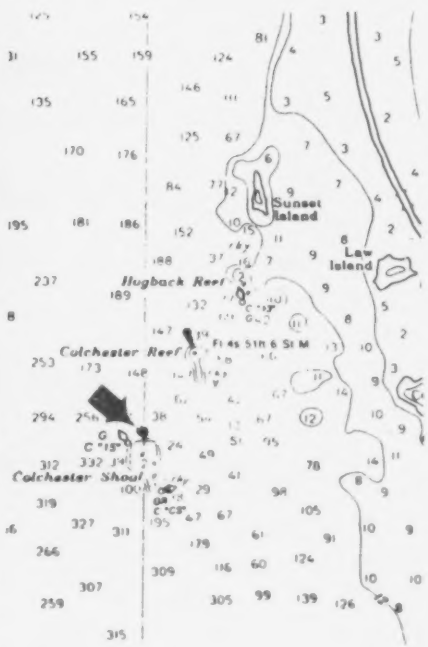
LOCATION: Northern face of Colchester Shoal reef.

SUGGESTED READING:

Davison, Rebecca, Editor, 1981. *The Phoenix Project.* Prepared for the Vermont Division for Historic Preservation by the Champlain Maritime Society, Burlington, Vermont. (Available in Burlington area libraries)



Preserve Location



APPENDIX C

REPRESENTATIONAL LISTING OF FEDERAL AND STATE MARITIME PARKS, MUSEUMS AND EXHIBITS

The following is a representational compilation of federal, state and territorial parks, sites, museums and historical societies dedicated to the preservation of maritime history, sites, properties, objects and artifacts having cultural, historic or archeological value including museums, ships and shipwreck sites. In addittion to these fine examples of maritime history are those historic vessels that are listed in the National Register of Historic Places (which are set out in Part IV of the Final Guidelines of the United States Department of Interior, National Parks Service, 55 Fed. Reg. 50,166, 50,139-50,145 (1990). Also included in this listing are some of the private museums and exhibitions dedicated to maritime history.

FEDERAL:

Isle Royale National Park (16 U.S.C. Sec. 408 *et seq.*),
Michigan
Location of many sunken vessels

Boston National Historic Park (16 U.S.C. Sec. 4102),
Boston, Massachusetts
Home of the U.S.S. Constitution ("Old Ironsides")

Maritime National Historic Park (16 U.S.C. Sec. 410nn *et seq.*)
San Francisco, California
Maritime museum, including about 12 ships of variousages and purposes.

Biscayne National Park (16 U.S.C. Sec. 410gg *et seq.*)
Miami, Florida
Location of many sunken colonial vessels

U.S.S. Monitor Marine Sanctuary (16 U.S.C. Sec. 1445)
Atlantic Ocean
Resting site of the U.S.S. Monitor, civil was ironclad

Salem Maritime National Historic Site
Salem, Massachusetts
Preservation of lands and structures having an important relationship to the maritime history of New England.

American Merchant Marine Museum
U.S. Merchant Marine Museum
Kings Point, New York
Museum dedicated the American merchant marine

Canal Park Maritime Museum
Duluth, Minnesota
Maritime history of the Upper Great Lakes owned and operated by the U.S. Army Corps of Engineers.

Naval Historical Center and Navy Memorial Museum
Washington, D.C.
The U.S. Navy's historic research center and museum reflecting the history of the U.S. Navy.

STATES:

ALABAMA:

U.S.S. ALABAMA Battleship Memorial Park
Mobile, Alabama
Preservation of the U.S.S. ALABAMA and other World War II naval vessels

CONNECTICUT:

Mystic Seaport Museum, Inc.
Mystic, Connecticut
One of America's finest maritime museums consisting of both ships and land sites to reflect the maritime history of the United States.

FLORIDA:

Urca de Lima State Underwater Archeological Preserve
Fort Pierce, Florida
Underwater remains of 1715 Spanish vessel

City of Hawkinsville
State Underwater Archeological Preserve
In the Suwannee River near Oldtown, Florida
Underwater remains of steamboat sunk in 1922.

San Pedro State Underwater Archeological Preserve
Near Islamorada, Florida
Underwater remains of 1733 Spanish vessel

GEORGIA:

Confederate Naval Museum
Columbus, Georgia

Ships of the Sea Maritime Museum
Savannah, Georgia
General maritime museum.

IDAHO:

Steamboat JEAN
Lewiston, Idaho
Restoration and preservation of strenwheeler JEAN and the maritime history of sternwheelers in the settlement of the American west.

ILLINOIS:

Great Lakes Naval and Maritime Museum
Chicago, Illinois
Maritime history of the Great Lakes.

INDIANA:

Howard National Steamboat Museum
Jeffersonville, Indiana
Dedicated to the history of steamboats on America's rivers.

MAINE:

Maine Maritime Museum
Bath, Maine
Dedicated to the maritime history of coastal Maine.

MARYLAND:

U.S.S. CONSTELLATION
Baltimore, Maryland
Sailing frigate of the War of 1812

Baltimore Maritime Museum
Baltimore, Maryland
Museum and berthing of the submarine U.S.S. TORSK and lightship CHESAPEAKE.

Chesapeake Bay Maritime Museum
St. Michaels, Maryland
Preserving the maritime history of Chesapeake Bay.

State of Maryland
Maritime Archaeology Program
Submerged Sites List
Listing over 50 historic shipwrecks lying in Chesapeake Bay and the rivers of Maryland.

MASSACHUSETTS:

Boston Tea Party Ship and Museum
Boston, Massachusetts
Preserving the history of the Boston Tea Party through a museum and the brig, BEAVER II.

MICHIGAN:

Dossin Great Lakes Museum (and the Great Lakes Maritime Institute)
Detroit, Michigan
Study and preservation of maritime history of the Great Lakes and Detroit.

MISSISSIPPI:

CAIRO Museum
Vicksburg, Mississippi
The restoration and preservation of the U.S.S. CAIRO, civil war ironclad sunk in the Mississippi River.

NEBRASKA:

Missouri River History Museum
Brownville, Nebraska
Maritime history of the Missouri River.

NEW YORK:

South Street Seaport Museum
New York, New York
Maritime history of New York harbor.

Whaling Museum
Cold Spring Harbor, New York
History of whaling.

H. Lee White Marine Museum
Oswego, New York
Includes maritime history of Lake Ontario.

NORTH CAROLINA:

U.S.S. HURON State Historic Shipwreck Preserve
Kure Beach, North Carolina
Underwater remains of U.S.S. HURON sunk during a storm in 1877.

OHIO:

Great Lakes Historical Society Museum
Vermillion, Ohio
Preservation of maritime history of the Great Lakes and Lake Erie.

OREGON:

Columbia River Maritime Museum
Astoria, Oregon
Museum and lightship COLUMBIA dedicated to the maritime history of the Columbia River and the Pacific Northwest.

PENNSYLVANIA:

Cruiser, U.S.S. OLYMPIA
Philadelphia, Pennsylvania
Preservation of the U.S.S. OLYMPIA, Admiral Dewey's flagship at the battle of Manila Bay, Philippine Islands during the Spanish-American War in 1898.

Philadelphia Maritime Museum
Philadelphia, Pennsylvania
Maritime history of the Delaware River and Bay.

RHODE ISLAND:

Herreshoff Marine Museum
Bristol, Rhode Island
Preservation of the Herreshoff yachts.

H.M.S. "Cerberus" and H.M.S. "Lark"
In Narragansett Bay near Aquidneck Island
Wreck sites of two Revolutionary War British vessels.

SOUTH CAROLINA:

Patriot's Point Naval and Maritime Museum
Mt. Pleasant (Charleston), South Carolina
Preservation of 20th Century merchant vessels and warships with an emphasis on aircraft carriers.

TEXAS:

Battleship TEXAS State Historical Park
La Porte, Texas
Preservation of the World War I and II battleship U.S.S. TEXAS.

VERMONT:

Lake Champlain Maritime Museum
Basin Harbor, Vermont
Maritime history of Lake Champlain.

The "Phoenix" State Underwater Historic Preserve
In Lake Champlain
Steamboat sunk in 1819.

The "General Butler" State Underwater Historic Preserve
In Lake Champlain
Lake sailing vessel sunk in 1876.

The "Coal Barge" State Underwater Historic Preserve
In Lake Champlain
Lake/canal barge (A.R. NOYES) sunk in 1884.

The "Horse Ferry" State Underwater Historic Preserve
In Lake Champlain
Horse powered ferry believed sunk in 1840's.

VIRGINIA:

Yorktown Shipwrecks State Maritime Archeological Site
In the York River at Yorktown, Virginia
Sunken remains of the Revolutionary War British vessels sunk by the American and French forces during the 1781 siege of Yorktown.

U.S.S. CUMBERLAND State Maritime Archeological Site
In the James River at Newport News, Virginia
Remains of the U.S.S. CUMBERLAND sunk by the ironclad C.S.S. VIRGINIA (also known as the "MERRIMACK") in the Civil War.

C.S.S. FLORIDA State Maritime Archeological Site
In the James River at Newport News, Virginia
Remains of the ironclad C.S.S. FLORIDA sunk by the Confederates in Civil War.

Mariner's Museum
Newport News, Virginia
One of the nation's finest maritime museums.

WISCONSIN:

Manitowoc Maritime Museum
Manitowac, Wisconsin
Maritime museum of the Upper Great Lakes.

Wisconsin Marine Historical Society
Milwaukee, Wisconsin
Maritime history of the Great Lakes and the St. Lawrence Seaway.

TERRITORIES:
PUERTO RICO:

Museo de Historia Militar y Naval de Puerto Rico
San Juan, Puerto Rico
Includes the maritime history of Puerto Rico